	राजस्थान राजपत्र विशेषांक	**RAJASTHAN GAZETTE Extraordinary**
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भाग 5 (घ)

भारत के निर्वाचन आयोग की विज्ञप्तियां आदि।

निर्वाचन विभाग

अधिसूचना

जयपुर, अगस्त 21, 2020

संख्या एफ.4(1)(8)प्रथम/निर्वा./2019/3069 :– भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या 82/राजस्थान–वि0स0/(2/2019)/2020 दिनांक 6 अगस्त, 2020 मय माननीय राजस्थान उच्च न्यायालय, जोधपुर के निर्णय दिनांक 27 फरवरी, 2020 जिसमें (2) गंगानगर विधानसभा निर्वाचन क्षेत्र की निर्वाचन अर्जी संख्या 2/2019 का निर्णय समाविष्ट है, को सर्वसाधारण के सूचनार्थ प्रकाशित किया जाता है।

प्रवीण गुप्ता,
प्रमुख शासन सचिव।

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली–110001

तारीखः– 6 अगस्त, 2020
15 श्रावण, 1942 (शक)

अधिसूचना

सं0 82/राजस्थान–वि0स0/(2/2019)/2020: लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग 2019 की निर्वाचन अर्जी संख्या 2/2019 में राजस्थान उच्च न्यायालय, जोधपुर के तारीख 27 फरवरी, 2020 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

राहुल शर्मा,
सचिव,
भारत निर्वाचन आयोग।

SECRETARIAT OF THE
ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.

Dated:- 6th August, 2020
15 Shravana, 1945 (SAKA)

NOTIFICATION

No. 82/RJ-LA/(2/2019)/2020:- In pursuance of Section 106 of the Representation of People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes

judgments dated 27th February, 2020 of the High Court of Rajasthan at Jodhpur in Election Petition No. 2 of 2019.

By order,

RAHUL SHARMA,
SECRETARY,
ELECTION COMMISSION OF INDIA.

[EP-2/2019]

HIGH COURT OF JUDICATURE FOR RAJASTHAN

JODHPUR

S.B. Election Petition No. 2/2019

Ashok Chandak S/o. Shri Madan Lal, aged about 58 years, R/o. 203-G Block, Srigangangar.

----Petitioner

Versus

Rajkumar Gaur Son of Shri Jagdish Chandra, R/o. 50, Vrindavan Vihar, Sri Gangangar.

----Respondent

For Petitioner(s)	:	Mr. Vikas Balia Mr. Kuldeep Prajapat
For Respondent(s)	:	Mr. Rajesh Joshi, Senior Advocate assisted by Mr. Dron Kaushik Mr. Sunil Beniwal, AAG

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

27/02/2020

This order shall dispose of an application preferred by the respondent returned candidate under the provisions of Order VII Rule 11 Code of Civil Procedure.

The present Election Petition has been filed by the petitioner under Sections 80, 81, 100(1)(d)(i) & 100(1)(d)(iv) of the Representation of Peoples Act, 1951 challenging the election of respondent Rajkumar Gaur from Sriganganagar Legislative Constituency No.002 held on 07.12.2018 and also for declaring the same as void. The challenge is made mainly on the following grounds :-

"*A. That the Act of 1951 and the Conduct of Election Rules of 1961 were amended pursuant to the judgment passed by the Hon'ble Supreme Court as*

referred supra and the Form No.26 was prescribed to be furnished by candidate along with Nomination Paper before the Returning Officer containing information regarding criminal antecedents, educational qualification and assets of the candidate, his wife and dependent children in relation to his/her candidature. The Supreme Court has recognized that the citizen of India is having fundamental right under Article 19(1)(a) to know about the candidates contesting the elections and to effectuate the said right, the Act of 1951 and the Rules of 1961 were suitably amended. Thus, the respondent was under statutory obligation to disclose the necessary information required to be furnished under the Form No.26 as prescribed under Rule 4-A of the Rules of 1961. The direction issued by the Hon'ble Supreme Court in its various judgments, in this regard are also binding in nature by virtue of Article 141 of the Constitution of India and the same cast solemn obligation upon the candidates(i.e. the respondent in the present case) to furnish information regarding pending criminal case in the affidavit as required Form No.26 submitted along-with nomination paper. The suppression of the said information in the nomination paper makes it a clear case of non- compliance with the provisions of Rule 4-A of the Conduct of Election Rules, 1961, the order dated 10.10.2018 issued by the Election Commission read with Section 33-A of the Act of 1951. Therefore, the result of election of Sriganganagar Legislative Assembly Constituency No.002 has been materially affected in so far as, the respondent is concerned, he being a returning candidate, his election is liable to be declared void under Section 100(1)(d)(iv) of the Act of 1951.

B. *That the respondent has suppressed the material information regarding criminal case no.19/2004 pending before the Additional Chief Judicial Magistrate No.2, Sriganganagar in its publication as per prescribed format of C-1 as required by the Election Commission vide its order dated 10.10.2018. The order dated 10.10.2018 was*

issued pursuant to the judgment passed by the Hon'ble Supreme Court in Writ Petition (Civil) No.536 of 2011 (Public Interest Foundation & Ors. V/s Union of India & Anr.) because, such disclosure is having impact to influence the minds of voters and also having obvious effect over result of election. Thus, the non disclosure of information regarding pending criminal case as per format prescribed vide order dated 10.10.2018 is having material effect over the results of election and the same is in violation of the orders passed by the Election Commission from time to time. Therefore, the result of election of Sriganganagar Legislative Assembly Constituency No.002 has been materially affected in so far as, the respondent is concerned, he being a returning candidate, his election is liable to be declared void under Section 100(1)(d)(iv) of the Act of 1951.

C. *That the respondent was having knowledge of the fact that a criminal case no. 19/2004 is pending against him before the Chief Judicial Magistrate, Sriganganagar from the year 2004 as the particulars thereof were mentioned in the nomination paper submitted by the respondent earlier for contesting election of Sriganganagar Legislative Assembly Constituency in 13th Rajasthan Legislative Assembly Election. However, the respondent has deliberately suppressed the fact regarding pending criminal case in the nomination paper filed in the aforesaid election. The suppression of information regarding criminal antecedents in the nomination paper makes it a clear case of non-compliance with the provisions of the Constitution, the Section 33-A of the Act of 1951, the Rule 4-A of the Rules of 1961 and orders dated 10.10.2018 issued by the Election Commission. It also amounts to furnishing of a false affidavit. Therefore, the result of election of Sriganganagar Legislative Assembly Constituency No.002 has been materially affected in so far as, the respondent is concerned, he being a returning candidate, his election is liable to be declared void*

under Section 100(1)(d)(iv) of the Act of 1951.

D. That the criminal case no.19/2004 is registered u/s. 353, 332, 336, 323, 188, 147, 148, 149 of IPC and pending before the Court of Additional Chief Judicial Magistrate No.2, Sriganganagar. The respondent has specifically mentioned the particulars of the said criminal case in nomination paper submitted by him earlier while contesting election from Sriganganagar Legislative Assembly Constituency in 13th Rajasthan Legislative Assembly Election. Thus, it is clear that the respondent was having knowledge about pendency of the said criminal case at the time of filing the nomination paper in the aforesaid election. The respondent was under statutory obligation to declare about pendency of such criminal case. However, the respondent has concealed the said information in the affidavit filed in Form No.26 along-with nomination paper of aforesaid election. The acceptance of a nomination concealing the information of pending criminal case and not satisfying the statutory requirement amounts to improper acceptance of nomination as a consequence thereof, the result of election of Sriganganagar Legislative Assembly Constituency No.002 has been materially affected in so far as, the respondent is concerned, he being a returning candidate, his election is liable to be declared void under Section 100(1)(d)(i) of the Act of 1951."

On 25.02.2019 the summons of the election petition was issued for service upon the respondent. In pursuance of the notice of the election petition having been served the respondent caused appearance before this Court. An application was preferred under Order VII Rule 11 read with Section 151 Code of Civil Procedure to this application no counter/reply has been filed by the petitioner.

Heard learned counsel for the parties.

The counsel for the respondent returned candidate has submitted that the basis on which the present election petition has been preferred is factual incorrect as the Criminal Case which is stated to have been filed against the returned candidate is neither pending nor was ever filed. He further submits that though the name of the person against whom the criminal case is said to have been pending in the election petition pertains to some other person as the returned candidate is not the person who is involved in the criminal case.

Learned counsel submits that as per the charge-sheet filed by the Investigating Agency, it is clear that the person involved in the Criminal Case No.19/2004(renumbered as 1506/2014) is Rajkumar Gaur S/o. Vazirchand. Admittedly petitioner is Rajkumar Gaur S/o. Jagdish Chandra. Learned counsel has placed on record the copy of the charge-sheet and the order-sheets of the trial Court in support of his contention.

Learned counsel for the petitioner fairly submits that he is not in a position to controvert the submissions/ assertions made in the application preferred by the respondent returned candidate under Order VII Rule 11 read with Section 151 Code of Civil Procedure. There is no other ground on which the election of the returned candidate has been challenged in this election petition.

I have considered the submissions made at the Bar and as per the documents annexed with the application under Order VII Rule 11 read with Section 151 Code of Civil Procedure, it is clear that the respondent returned candidate is not the person against whom the Criminal Case No.19/2004(renumbered as 1506/2014) is pending. Therefore, there is no question of suppression of material facts while filing the nomination papers by the respondent returned candidate. Since, this is the only ground on which the present election petition has been filed while laying a challenge to the election of the respondent returned candidate.

I am of the view that the election petition is not based on the correct facts and since the Criminal Case No.19/2004(renumbered as 1506/2014) pertains to some other person then the respondent as such the returned candidate has filed in the correct information in the nomination papers and no suppression has been made. Thus the grounds on which the present election petition has been filed are not sustainable.

As such no wrong has been committed by the respondent, while filing the nomination papers and he has discharged all statutory obligation. The acceptance of whatever stated in the election petition too will not change the complexion of the matter in any manner. Thus, it can be safely said that under the election petition the "cause of action" disclosed is no cause of action and whatever effort is made to agitate the cause is absolutely vexatious, illusory, meaningless and is not going to deliver any result even by trying the issue at full length. As such, the trial of the election petition shall be a fruitless and meaningless exercise.

Accordingly, the application preferred under Order VII Rule 11 read with Section 151 Code of Civil Procedure deserves acceptance. The same, therefore, is allowed, consequently, the election petition is rejected.

(VINIT KUMAR MATHUR),J

2-SunilS/-

By order,

RAHUL SHARMA,
SECRETARY,
ELECTION COMMISSION OF INDIA.

राज्य केन्द्रीय मुद्रणालय, जयपुर।